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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re)	No.	01-30923 DM
PACIFIC GAS AND ELECTRIC	)	Chapter	11
COMPANY,	)	Date:	February 26, 2002
Debtor.	)	Time:	9:30 a.m.
	)	Ctrm:	Hon. Dennis Montali
	)		235 Pine Street, 22 nd Floor
	)		San Francisco, California

**UNITED STATES TRUSTEE'S OBJECTION TO
PROFESSIONAL FEE APPLICATIONS OF**

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
WINSTON & STRAWN
HELLER, EHRMAN, WHITE & McAULIFFE, LLP
and
MILBANK, TWEED, HADLEY & McCLOY**

Linda Ekstrom Stanley, United States Trustee, submits this objection to the applications for compensation^{1/} filed by professionals employed by debtor, Pacific Gas and Electric Company ("PG&E" or "debtor"). This objection is limited to the applications submitted by Skadden, Arps, Slate, Meagher & Flom ("Skadden"), Winston & Strawn,

^{1/} All applications will be referred to by the shortened version of the firm's name followed by "Application" (e.g., the "Skadden Application").

Heller, Ehrman, White & McAuliffe ("HEWM") and Milbank, Tweed, Hadley & McCloy ("Milbank").

Summary of Professional Administrative Costs Through November 30, 2001

The United States Trustee has completed an analysis of the cost of professional services in this chapter 11 case. We attach the analysis to the Declaration of Patricia A. Martin in Support of the United States Trustee's Objection to Professional Fee Applications (the "Martin Declaration") as Exhibit "A." To summarize, the fees and expenses of professionals involved in the chapter 11 reorganization aspects of this case employed by debtor and the Official Committee of Unsecured Creditors total \$29,082,193 for the period ending November 30, 2001, a grand total of 78,037.9 hours. As Exhibit "A" shows, approximately 32% of those fees (or \$8,845,087) and 14,659.8 hours are attributable to work on debtor's proposed disclosure statement and plan. Approximately 25% of total fees (or \$6,736,576) and 21,507.2 hours are attributable to the disputes between debtor, the California Public Utilities Commission and the State of California. By contrast, professional fees attributable to the satisfactory resolution of the qualifying facility contracts amounted to only \$2,190,679 in fees and 7,424.1 hours.

Since the applications now under consideration were submitted, cover sheets seeking \$2,961,554 in additional fees and expenses for December 2001 have been filed bringing the total of fees and expenses over the life of the case to \$32,043,747.²

The United States Trustee summarized the fees in total and on a firm-specific basis:

Exhibit "A" – Summary of Professional Fees Incurred and as Noticed for Hearing for Period 4/6/01 through 11/30/01 & by Major Focus Area, as Defined by U.S. Trustee for Review Purposes.

Exhibit "B" – Summary of Professional Fees Incurred from 4/6/01 through 11/30/01 Related to Impasse Between PG&E, the CPUC, Department of Water Resources, State of California, Cal ISO and Cal PX.

Exhibit "C" – Summary of Professional Fees Incurred from 4/6/01 to 11/30/01 related to PG&E's Disclosure Statement & Plan, Plan Implementation and Plan Prosecution.

Exhibit "D" – Summary of Professional Fees Incurred from April 6, 2001 through

² This figure is a summary of the fees requested through cover sheet applications through December 31, 2001.

1 11/30/01 – Qualifying Facilities, Power Producers and Suppliers

2 **Exhibit “E”** – Summary of Professional Fees Incurred from 4/6/01 to 11/30/01 –
3 Other Focus Areas

4 **Exhibit “F”** – **Howard Rice Firm**
5 Exhibit “F-1” Summary by Focus Area
6 Exhibit “F-2” Matter from Most \$ to Least \$
7 Exhibit “F-3” Howard Rice Firm – by Attorney

8 **Exhibit “G”** – **Heller Ehrman Firm**
9 Exhibit “G-1” Summary by Focus Area
10 Exhibit “G-2” Matter from Most \$ to Least \$
11 Exhibit “G-3” Heller Firm – by Attorney

12 **Exhibit “H”** – **Skadden Firm**
13 Exhibit “H-1” Skadden Firm by Matter
14 Exhibit “H-2” Skadden Firm by Attorney

15 **Exhibit “I”** – **Cooley Firm**

16 **Exhibit “J”** – **Winston & Strawn**
17 Exhibit “J-1” By Segment of PG&E Business (Based on W&S Time Entries)
18 Exhibit “J-2” Winston & Strawn by Attorney

19 **Exhibit “K”** – **Milbank Firm**
20 Exhibit “K-1” Milbank Firm by Focus Area
21 Exhibit “K-2” Milbank Firm by Attorney

22 **Exhibit “L”** – **PricewaterhouseCoopers**
23 Exhibit “L-1” PricewaterhouseCoopers by Focus Area
24 Exhibit “L-2” Matter from Most \$ to Least \$
25 Exhibit “L-3” PricewaterhouseCoopers by Professional

26 For most of these firms, the United States Trustee has analyzed the application by category
27 of work (focus area), by attorney and by comparative size of the matter.

28 **Argument**

29 The United States Trustee is responsible for, among other things, supervising "the
30 administration of cases ... under chapter 7" of the Bankruptcy Code, and "monitoring
31 applications for compensation and reimbursement filed under section 330 of title 11." 28
32 U.S.C. § 586(a)(3)(A). Counsel has the burden of proving entitlement to compensation
33 under 11 U.S.C. § 330(a)(3)(A). In re Xebec, 147 B.R. 518, 524 (Bankr. 9th Cir. 1992).
34 denied. The Bankruptcy Code permits the Bankruptcy Court to award "reasonable
35 compensation for actual, necessary services" to professionals employed under sections 11

U.S.C. §§ 327 and 1103. To merit compensation, an applicant for fees must prove an “identifiable, tangible, and material benefit to the estate.” *Andrews & Kurth LLP v. Family Snacks, Inc. (In re Pro-Snax Distributors, Inc.)*, 157 F.3d 414, 426 (5th Cir. 1998). An applicant must affirmatively show requested fees are compensable and actual and necessary. *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc., (In re Puget Sound Plywood, Inc.)*, 924 F.2d 955, 958 (9th Cir. 1990).

Skadden, Arps, Slate, Meagher & Flom LLP

1. The Skadden Application Is Not Detailed Enough to Justify \$825,001 For Services Related to Debtor’s Plan of Reorganization or to Distinguish Skadden’s work from Winston & Strawn’s Work

Both the Ninth Circuit and the Bankruptcy Court’s *Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees* (the “Guidelines”) require professional firms to justify clearly a request for fees. *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc., (In re Puget Sound Plywood, Inc.)*, 924 F.2d 955, 958 (9th Cir. 1990) (proponent must demonstrate fees are “necessary and reasonable”); Guideline #3 “Project Billing” (“The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the court as to the complexity and difficulty of the task, the professional’s efficiency and the results achieved.”) (emphasis added)). Skadden’s one paragraph description of its services does not meet this standard, particularly in view of the large size of the request, \$825,001.

Much is missing from Skadden’s generic request. Careful review of the time notes filed with the Skadden Application reveals two things. The firm is working on research, contract review and drafting, as the Application claims. The review also suggests the firm could have described its work with much greater precision. Martin Declaration ¶ 11 and Exhibit “H-1”. Though there is not one specific reference in the Skadden Application, the time notes supporting the application reveal Skadden is preparing several different applications to the FERC under the Federal Power Act (“FPA”) to effect the transfers the plan proposes. The Skadden time entries repeatedly refer to FPA § 203 (to transfer electric

assets), FPA § 204 (to issue securities) and FPA § 205 (to approve a power sale contract between Gen and the reorganized debtor and to approve the “back-to-back” agreement) and to the agreements and legal documents necessary to support these applications.

The Skadden Application’s lack of specificity becomes obvious when compared with the Winston & Strawn Application seeking \$974,937 in charges for “FERC and NRC Regulatory Issues,” which suffers the same defect. Winston & Strawn’s application also seeks compensation for work implementing PG&E’s proposed plan. But the skimpy descriptions the firms have used provide no assistance to understanding either the exact nature of the work or the allocation of responsibility. A review of the two applications side-by-side would suggest the firms were doing the same work. Winston & Strawn alleges it was responsible for “regulatory issues arising out of the Debtor’s Plan” (Winston & Strawn Application 9:25-27). Skadden says it is dealing with “regulatory approvals that would be needed to implement the Plan.” (Skadden Application 22:7-8). It is not possible to distinguish the two.

In short, the narrative descriptions are inadequate to support the two firms’ combined request for nearly \$2 million in fees. Proper descriptions of the work would describe in detail the nature of the assignment, the specific tasks involved, the nature of any research done, drafting assignments completed and the results achieved. To be complete, disclosure of the work should satisfy the Guidelines mandate that firms supply “meaningful guidance to the court as to the complexity and difficulty of the task, the professional’s efficiency and the results achieved.”

2. Skadden’s Request for \$279,856 in the WAPA Dispute Does Not Disclose the Results of the Work

_____The Skadden Application summarily describes “extensive regulatory litigation arising out of PG&E’s rate filing” and seeks \$279,856 in fees for this work. The narrative does not describe the ultimate results of the work. According to documents obtained from the FERC’s web-site, PG&E lost its bid to amend Contract 2984A to transfer additional costs to Western because the FERC’s presiding judge found the amendment to be barred by a

1 doctrine known as Mobile-Sierra. PG&E asked for a hearing before the full commission,
2 which affirmed the hearing judge's decision. PG&E still later asked for a rehearing of the
3 matter, which the FERC denied, saying "PG&E presents the same arguments it offered it its
4 brief on exceptions." Copies of the decisions are attached to the Martin Declaration as
5 Exhibit "M."

6 The Skadden Application does not disclose the procedural history of the WAPA
7 matter. It fails to explain the necessity or value of the asking the full FERC panel for
8 hearing of the presiding judge's decision or for the request for a rehearing. The United
9 States Trustee suggests the fees attributable to the re-hearing requests be disallowed.

10 3. Clerical Time of Legal Assistants Should Only Be Compensated at \$40.00/hr

11 Professional firms are entitled to seek compensation for paralegal fees at a non-
12 clerical rate if the firm proves a lawyer would have performed the services but for the
13 paraprofessional's work, the paraprofessional has specialized training, and the application
14 contains a resume showing the training. Guideline # 5; *Memorandum Decision Regarding*
15 *Applications for Interim Compensation of Professionals* filed on December 12, 2001, 5:6-
16 6:22. Skadden seeks compensation of \$50,541 for 466.1 hours of paralegal time. Skadden
17 does not appear to have submitted any evidence its paralegals have specialized training or
18 experience. The United States Trustee's review suggests 235.4 hours incurred by
19 Skadden's paraprofessionals is clerical in nature. Most of these entries consist of
20 proofreading, creating indices of pleadings and updating files. The United States Trustee
21 suggests a reduction of \$16,523 to limit the hourly rate to \$40/hr.³ Martin Declaration ¶ 17,
22 Exhibit "N."

23 4. Skadden's Request Should Be Reduced by \$6,987 to Eliminate Duplicate
24 Entries

25 The Skadden Application appears to have several identical, all day time entries for
26 Messrs. Baran, Runyon and Khan. The entries are all dated August 21, 2001, and the time
27

28 ³ The suggested reduction also takes account of several duplicate entries discussed in Ms. Martin's declaration.

1 and descriptions are identical. Martin Decl. ¶ 18 and Exhibit "O." The request should be
2 reduced by \$6,987 for duplicate entries.

3 5. Skadden's Application Should Be Reduced by \$4,589 to Eliminate Charges for
4 First Class Airfare

5 Several Skadden attorneys traveled (return) from the east to the west coast. The
6 firm does not always appear to charge the estate at coach rates because the prices on the
7 tickets fluctuate as much as \$1,500 though the travel periods are comparable. The United
8 States Trustee believes a reduction of \$4,589.06 should be made to account for travel at
9 other than coach class rates. Martin Decl. ¶ 19 and Exhibit "P."

10 **Winston & Strawn**

11 1. Winston & Strawn's Application Is Not Detailed Enough to Justify the
12 \$974,937 For Services Related to Debtor's Plan of Reorganization or to
13 Distinguish Winston & Strawn's Work from Skadden's

14 The United States Trustee objected on page 4 of this document to the fees and
15 expenses of Skadden for work connected to giving effect to debtor's plan and incorporates
16 those objections here. In short, distinguishing the work the two firms are doing from each
17 other is impossible. Like Skadden, Winston & Strawn relies on a very brief description of its
18 work to support a request for \$974,937 in fees.

19 The United States Trustee's detailed review of the Winston & Strawn application
20 shows the firm is working on several aspects of implementing the proposed plan. These
21 include restructuring the gas business (\$630,489), the nuclear business (\$165,199), and the
22 hydroelectric business (\$179,249). At a minimum, the firm should explain the nature and
23 scope of the projects, the challenges the company faces, and the likelihood of success.
24 The firm ought to explain why the time spent on the gas business (\$630,489) is so much
25 higher than the other business lines.

26 The descriptions the firm is using for its time entries are also inadequate. In the gas
27 segment, one attorney characterized all 125.8 hours in September 2001 and all 189.7 hours
28 in November 2001 as "work on gas application." (Winston & Strawn Application, time
entries for attorney Dennis, September and November 2001). Winston & Strawn should

1 ensure its professionals use time entries to indicate with precision the nature of the tasks
2 performed.

3 2. Winston & Strawn Must Justify the Necessity of Its Work on the Interstate Gas
4 Pipeline Project

5 The United States Trustee understands PG&E's reorganization plan includes the
6 utility's purchase of 3 miles of gas pipeline from an affiliate of its parent, PG&E Corporation.
7 The three mile segment may straddle the California/Oregon border, making it an interstate
8 pipeline when combined with PG&E's existing gas lines. Debtor's plan calls for the
9 disaggregation of debtor's assets and it appears likely gas-related assets like the three mile
10 segment debtor is purchasing and the newly formed interstate pipeline will be transferred to
11 GTrans the newly formed limited liability company. Winston & Strawn should discuss this
12 transaction and explain how it is beneficial to the bankruptcy estate (rather than simply to
13 GTrans, the new entity).

14 3. Non-Working Travel Time

15 Winston & Strawn's Application includes billings for travel time that exceed the
16 court's limit of 2 hours per trip (as enunciated in the *Memorandum Decision Regarding*
17 *Applications for Interim Compensation of Professionals* 3:18-4:13). The United States
18 Trustee identified \$8,300 in travel time that is not described as "working travel." Martin
19 Declaration ¶ 20, Exhibit Q. The firm's application should be reduced by \$8,300.

20 **Heller, Ehrman, White & McAuliffe**

21 In its December 12, 2001 Memorandum Decision, the court disallowed (at any cost
22 above \$40/hr.) clerical work performed by HEWM legal assistants and staff. In its current
23 application, HEWM seeks payment of \$25,763^{4/} in fees attributable to work the Bankruptcy
24 Court allowed at \$40/hr. HEWM seeks payment of the higher hourly rate on two theories:
25 the work is not clerical or overhead and the hourly rate exceeds \$40 when all costs are
26 factored in. HEWM submitted a declaration of Mr. John Rich (the "Rich Declaration") to the
27 _____

28 ^{4/} This figure is derived from the Heller Application at 29:1: the document requests \$2,116,324.60 in fees
at \$40.00 hour for certain staff or \$2,142,087.50 at full rates. The difference is \$25,763.

United States Trustee in support of its request for an hourly rate in excess of \$40.

1. Time Spent On News Gathering and File Maintenance Should be Characterized as Overhead and is not Separately Compensable

Time spent by Mr. Luster collecting news articles may be necessary but it does not require specialized expertise. Mr. Luster says he performs on-line searches using the Daily Bankruptcy News and other major publications like the San Francisco Chronicle, the New York Times and the like. *Declaration of David R. Luster in Support etc.*, 6:23 ff. (¶ 19 ff.). The general nature of the publications Mr. Luster is reviewing suggests the search does not require specialized expertise. Mr. Luster admits HEWM's library staff could perform these tasks. This work may be important and may require skill, but it is overhead and not separately compensable.

HEWM's argument on file maintenance supplements the facts but should not change the results. Citing the great number of its PG&E matters and number of HEWM offices working on PG&E files, the firm insists it would be impossible for secretaries to manage the PG&E files, especially in view of the complexity of the cases. The argument misses the United States Trustee's argument from the previous fee applications: the work is secretarial in nature and should not be separately compensated. Maintaining files and dockets, even complicated files and dockets, is not legal work and is not separately compensable.

2. HEWM Has Not Justified a Rate in Excess of \$40 for Clerical Work

In the December 12, 2001 Memorandum Decision, the Bankruptcy Court ordered HEWM to submit evidence that the hourly rate of clerical staff should exceed \$40.00, and also ordered the United States Trustee to object if she believes a higher rate has not been justified. The United States Trustee has no wish to divulge HEWM's confidential information, but she does not believe any further hearing on the question is necessary and she will discuss the remaining issue in categories rather than figures.⁵

To arrive at the hourly rates it seeks to charge, HEWM uses both direct and indirect

⁵ Suffice to say, the hourly rates for HEWM's non-professionals meet or exceed the stated billing rate in the main.

1 costs. Direct costs include salary and benefits such as insurance. Indirect costs include
2 costs like office space and operating expenses like office supplies and equipment, as well
3 as the costs of office and firm administration. The United States Trustee does not believe
4 the so-called indirect costs should be included in the hourly rate allowed because these
5 costs are not the direct costs of employment the Bankruptcy Court referenced in its order.

6 **MILBANK, TWEED, HADLEY & McCLOY**

7 The Milbank Application requests the court reconsider its December 12, 2001 order
8 disallowing fees incurred by the firm amending and supplementing its first application. In
9 the December 12 order, the Bankruptcy Court disallowed \$15,000 in fees and indicated an
10 intention to disallow any fees attributable to defending the first application. Milbank now
11 contends it has written off an additional \$49,973.50 in its current application to account for
12 time expended modifying and supplementing the first application in response to the court's
13 December 12 order. Milbank believes the total adjustment of \$15,000 and \$49,973.50 is
14 too large given the circumstances.

15 The United States Trustee does not believe the court's order was improper given the
16 large size of the fee request and the poor form of the original application. Milbank's first
17 application was insufficient and required significant detailed analysis by the United States
18 Trustee and a lot of work by the firm to supplement and amend the application so that it
19 conformed to the Guidelines. The United States Trustee does believes the form of the
20 present application is a significant and helpful improvement over its predecessor.

21 Dated: February 19, 2002

22 Patricia A. Cutler
23 Assistant United States Trustee

24
25 By: _____
Stephen L. Johnson

26 Attorneys for United States Trustee
27 Linda Ekstrom Stanley
28